

In the Matter of:

Jane Doe

v.

The University of Virginia, et al.

Emily Babb

August 20, 2024



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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF VIRGINIA
3 Charlottesville Division

3 -----+
4 JANE DOE, :
5 Plaintiff, :
6 vs. :CASE NUMBER:
7 THE UNIVERSITY OF VIRGINIA, et al., :3:23-cv-00018-RSB
8 Defendants. :
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8 Tuesday, August 20, 2024

9 EMILY BABB,
10 called for examination by counsel on behalf of
11 Plaintiff, Jane Doe, pursuant to Notice taken via Zoom,
12 at approximately 10:00 a.m., before Janie Arriaga, a
13 certified Verbatim Reporter and a Notary Public in and
14 for the Commonwealth of Virginia, when there were
15 present on behalf of the respective parties.

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1 APPEARANCES:

2 On behalf of the Plaintiff:

3 ELIZABETH ABDNOUR, ESQUIRE

4 Abdnour Weiker, LLP

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10 On behalf of Defendants:

11 CHRISTOPHER P. BERNHARDT, ESQUIRE

12 AMY HENSLEY, ESQUIRE

13 Office of the Attorney General

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19 ALSO PRESENT: Jane Doe

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8	E X H I B I T S	
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10	(NONE)	
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1 received my J.D. from the University of Oklahoma in
2 2004.

3 Q And what year did you receive your DuPaul Paul
4 degree? I'm sorry, if I missed it?

5 A It's DePauw, with a W.

6 Q DePauw, I'm sorry.

7 A D-E-P-A-U-W. I graduated in 2011.

8 Q Did you work at all between high school and
9 undergrad or did you go straight to undergrad?

10 A I went straight to undergrad.

11 Q And what did you do then after you graduated
12 with your J.D.? Can you give me a summary of your
13 professional experience after that?

14 A Sure. I spent about a year-and-a-half as a
15 plaintiff's employment law attorney in a small law firm
16 in Dallas, Texas, called Janette Johnson and Associates.

17 In October of 2005, I joined the U.S.
18 Department of Education Office for Civil Rights in
19 Dallas, Texas, where I served as an attorney advisor
20 investigator, a senior attorney and specialist to the
21 chief attorney.

22 In 2015, I transferred to the Cleveland

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1 regional office for OCR, where I served as a supervisory
2 attorney program manager overseeing investigatory teams
3 in the Cleveland office, which oversaw Michigan and
4 Ohio.

5 After -- in 2017, I joined the University of
6 Virginia as the assistant vice president for Title IX
7 compliance and Title IX coordinator. I served in that
8 role for about three-and-a-half years before joining the
9 University of Denver as an associate vice chancellor for
10 Equal Opportunity in Title IX and Title IX coordinator
11 in January of 2021.

12 I served in that role until May of 2023, where
13 I joined Northwestern University as the associate vice
14 president for civil rights and Title IX compliance and
15 Title IX coordinator, and that is my current position.

16 Q Thank you so much.

17 So let me go back and just ask a few questions
18 about each of those roles. When you moved from the
19 private from doing plaintiff's employment law to OCR in
20 2005, what led you to make that transition?

21 A I was looking for a better worklife balance.
22 My husband and I are both attorneys and we're

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1 litigators. We were starting a family. And I knew that
2 there was an opportunity for us to find a little bit
3 better worklife balance through an administrative
4 position.

5 Q Got it. Did you find that?

6 A Yes.

7 Q And then what led you to transfer from Dallas
8 to Cleveland in 2015?

9 A This was a promotional opportunity. In
10 Denver, I was an investigator attorney, which means I
11 investigated complaints The Office for Civil Rights
12 postsecondary institutions in Arkansas, Louisiana,
13 Mississippi, and Texas.

14 The role in the Cleveland office was
15 supervising investigators. So I supervised about four
16 team leaders, who in turn supervised five to eight
17 attorney or non-attorney investigators. I oversaw the
18 intake, the assignment, the case processing, ensured
19 fair, thorough, and complete investigations.

20 Q And then in 2017, is when you left to go to
21 the UVA; is that right?

22 A Yes.

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1 Q During the course of your time in OCR, did you
2 have any involvement on developing policies or guidance
3 documents?

4 A No. The regional offices had the opportunity
5 to review Dear Colleague letters as they were issued,
6 but we did not develop them.

7 Q Did you ever review any of the Dear Colleague
8 letters?

9 A As they were going out the door, yes.

10 Q Which ones did you review?

11 A The only one I recall is a retaliation Dear
12 Colleague letter.

13 Q And can you give me the approximate date on
14 that one, if you recall?

15 A Sometime when I was in Cleveland.

16 Q Okay.

17 A 2017 to 2020. That's on the Department of
18 Education's website, either archived or still in place.

19 Q And just to clarify the record, you just said
20 sometime in 2017 and 2020, but I think you had told me
21 before you were in Cleveland from 2015 to 2017.

22 A Thank you. 2015 to 2017.

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1 with the Zoom link, and so we were trying to do this via
2 a conference call.

3 So I believe, based on those emails, that it
4 is likely that we met and would have had some post
5 notice of investigation meeting to walk through the
6 process.

7 Q Do you recall anything about the meeting?

8 A I don't recall anything about the meeting.

9 Q Okay. Did you ever meet with the respondent
10 in this matter?

11 A I don't recall meeting with the respondent.

12 Q On June 25th of 2020, according to the
13 documentation that we have, you issued a mutual
14 no-contact directive between the parties in this matter.
15 Do you remember that?

16 A I do not recall issuing any mutual no-contact
17 directive in this case.

18 Q Okay. Is that something that you did as
19 matter of routine?

20 A No. We did not --

21 MR. BERNHARDT: Objection.

22 THE WITNESS: Sorry, Chris.

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1 A No. We did not issue a mutual no-contact
2 directive in every formal investigation. We considered
3 the facts and circumstances of the matter, the requests
4 of the parties, and evaluating whether to issue a
5 one-sided or mutual no-contact directive.

6 BY MS. ABDNOUR:

7 Q So let me ask this first, was there ever a
8 situation in which you did not issue any no-contact
9 directives?

10 A Yes.

11 Q Okay. And then sometimes there were
12 situations in which you were issued one-sided,
13 no-contact directives, correct?

14 A Yes.

15 Q And then sometimes there were situations in
16 which you issued mutual no-contact directives, correct?

17 A Yes.

18 Q But you testified that you don't recall
19 issuing a mutual no-contact directive in this case; is
20 that right?

21 A Yes. I do not recall issuing a mutual
22 no-contact directive in this case.

1 Q Do you recall issuing a one-sided no-contact
2 directive in this case?

3 A No, I do not recall issuing any no-contact
4 directive in this case.

5 Q What are the factors that you would be
6 considering to issue a no-contact directive or not?

7 A We would consider the request of the parties.
8 We would consider the likelihood of the actions. We
9 would consider whether there were health and safety
10 risks at play that would lend itself to a no-contact
11 directive.

12 Q And do you think a no-contact directive was
13 appropriate for this matter?

14 MR. BERNHARDT: Objection; form.

15 A I did not issue a no-contact directive in this
16 matter.

17 BY MS. ABDNOUR:

18 Q Why not?

19 A As I recall, that was not -- I don't see any
20 documentation that that was requested by either party.
21 And we -- I'm not sure the rationale of the time, but we
22 would have considered those factors in determining

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1 whether to issue a no-contact directive.

2 Q If a no-contact directive had been requested
3 in this matter, would you have issued it?

4 MR. BERNHARDT: Objection; form.

5 A If a party requests a no-contact directive, we
6 still evaluate whether that is an appropriate measure
7 for us to implement.

8 BY MS. ABDNOUR:

9 Q And so in this case, would it have been an
10 appropriate measure to implement?

11 MR. BERNHARDT: Objection; form.

12 A It's possible that that could have been a
13 supportive measure that would have been.

14 BY MS. ABDNOUR:

15 Q Would it have been appropriate to issue a
16 no-contact directive against the claimant in this
17 matter?

18 MR. BERNHARDT: Objection; form.

19 A The time prior to August of 2020, on the
20 August 14th regulatory change, typically we were issuing
21 one-sided no-contact directives against just the
22 respondent. So it would have typically been, at that

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1 time, a one-sided if it had been issued.

2 BY MS. ABDNOUR:

3 Q Who would that have been against?

4 A The respondent.

5 Q Why is that?

6 A That was the practice --

7 MR. BERNHARDT: Objection; form.

8 A That was generally the practice of our Title
9 IX office prior to the regulatory change.

10 BY MS. ABDNOUR:

11 Q Why was that the practice?

12 MR. BERNHARDT: Objection; form.

13 A That was how they were implemented when I
14 started, and we continued that practice.

15 BY MS. ABDNOUR:

16 Q So making sure I understand your testimony,
17 the office's practice changed as a result of the 2020
18 regulation change that went into effect on August 14th
19 of 2020; is that right?

20 MR. BERNHARDT: Objection; form.

21 A The office's practice with regard to one-sided
22 or mutual no-contact directives shifted to mutual

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1 no-contact directives in response to the August 14th,
2 2020 implementation of the Title IX regulation changes.

3 BY MS. ABDNOUR:

4 Q Okay. And so just so that I can understand,
5 is it your testimony that the reason the office's
6 practice changed from one-sided to mutual no-contact
7 directives on August 14th of 2020 is because those
8 regulations required that change?

9 MR. BERNHARDT: Objection; form.

10 A We shifted the way we implemented our
11 supportive measures and moved towards more mutual
12 no-contact directives in response to the Title IX
13 regulatory changes.

14 BY MS. ABDNOUR:

15 Q Okay. What in the regulatory changes caused
16 that shift?

17 MR. BERNHARDT: Objection; form.

18 A The 2020 regulations regarding supportive
19 measures and burden.

20 BY MS. ABDNOUR:

21 Q What was the last word, I'm sorry?

22 A Burden.

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1 Finder?

2 A Not that I recall.

3 Q I may have asked this before, I just can't
4 remember if I asked it, so I apologize if I did ask it:
5 As far as you recall, did you ever provide any training,
6 any in-person training to Gabriel Finder?

7 A I don't recall.

8 Q The next person is Asher Biemann. Have you
9 ever interacted directly with Asher Biemann?

10 A I don't recall.

11 Q Have you ever provided any in-person training
12 to Asher Biemann?

13 A I don't recall.

14 Q Elizabeth McGill, other than the emails that I
15 saw that were exchanged, have you ever interacted with
16 her directly?

17 MR. BERNHARDT: Objection; form.

18 A Yes.

19 BY MS. ABDNOUR:

20 Q Tell me generally about the nature of those
21 interactions.

22 A With McGill, with the provost at the